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IN THE
Supreme Court of the United States

OCTOBER TERM, 1948

No. **752**

THE MARYLAND DRYDOCK COMPANY,
Petitioner,

vs.

MARKOS VLAVIANOS, ET AL., and
S. S. CYPRESS,
Respondents.

**CONDITIONAL CROSS-PETITION FOR WRIT OF
CERTIORARI TO UNITED STATES COURT
OF APPEALS FOR THE FOURTH CIRCUIT**

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The Petitioner Maryland Drydock Company prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit, the writ to issue only in the event that this Court should grant the Petition for Writ of Certiorari in No. 672, at this term.

THE OPINIONS BELOW

The opinion of the District Court is unreported but appears at pages 88-96 of the Record in No. 672. The opinion of the Court of Appeals is reported at 171 F. (2d) 435 and appears at pages 126-133 of the same Record.

JURISDICTION

The judgment of the Court of Appeals was entered on December 27, 1948. By order of this Court dated March 25, 1949, the time for filing this petition was extended to April 26, 1949. The jurisdiction of the Court is invoked under 28 U. S. C. A. Sec. 1254 and Rule 38 (5) (b) of this Court.

STATEMENT OF THE FACTS

The facts are fully stated in the brief filed by this Petitioner in opposition to petition for writ of certiorari in No. 672, at this term.

QUESTION PRESENTED

Does a seaman who has been hired at a flat sum for a particular voyage, and not at a monthly rate, have any right to "one month's wages" as compensation for wrongful discharge under 46 U. S. C. A. Sec. 594?

REASONS FOR GRANTING THE WRIT

The Respondent seamen were orally hired at a daily wage ("port rate") to work upon a ship in Baltimore harbor prior to embarking for Greece. Shortly before the ship was intended to sail, written contracts were substituted for the oral agreements, by which the Respondents were engaged to make the voyage for a flat sum ("contract rate"). The ship did not sail, and the Respondents were discharged. Accordingly they sued, among other things, for compensation under 46 U. S. C. A. Sec. 594:

"Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may

have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged recover such compensation as if it were wages duly earned."

The District Court held that the statute was not applicable to a wage agreement which contemplated a lump sum, or a single voyage or trip payment (R. 94), i.e. the contract rate. It found no way of dividing the compensation into "one month's wages" when it could not be determined how long the voyage would require. The Court thought that divisibility of compensation was implied by the very language of the statute and that it was not intended to apply to this type of articles. Consequently the seamen recovered nothing under the statute. This interpretation is supported by *MacLachlan on Merchant Shipping* (London, 1932) p. 177, construing the similar English statute. There is no other relevant authority.

The Court of Appeals modified on the ground that the "one month's wages" could and should be computed at the port rate. This added \$3,600.00 to the amount recovered by the seamen.

The Respondents have filed a petition for writ of certiorari in No. 672 claiming, among other things, one month's wages under 46 U. S. C. A. Sec. 594 computed at the contract rate. This would amount to \$14,560.00, in addition to the seamen's other claims against the fund of \$17,847.56 in the Registry of the Court. Their total claims would wipe out the fund.

The Petitioner believes that the Court of Appeals was in error in allowing anything to the Respondents under the statute. Section 594 specifically provides that it shall be applicable only to *an agreement signed by the seaman*, and

clearly implies that the "one month's wages" are those earned *under such a signed agreement*. The Court of Appeals for the Fourth Circuit has recently so held in *Old Point Fish Co. v. Haywood*, 109 F. (2d) 703 (CCA 4, 1940), in which it said at page 706:

"As the agreement here was oral and not written it is obvious that the statute is not literally applicable to the case."

In the face of the clear statutory mandate and of its previous decision, the Court below found the statute applicable to the ORAL agreements for the port wage rate. As a result of this error the Respondent seamen were awarded \$3,600.00 more than they would be entitled to under the Petitioner's theory of the case, which was adopted by the District Court.

CONCLUSION

The Petitioner believes that, if this Court should decide to review the decision below, it should, in all equity open up *all* questions at issue and allow both parties to complain of error on part of the Court of Appeals. Consequently, the Petitioner urges that in the event the Court should grant the petition for a writ of certiorari in No. 672, this Cross-petition should likewise be granted.

Respectfully submitted,

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